

TRIAL CONDUCT AND DECORUM
in
U.S. Magistrate Judge Stanley A. Boone's Courtroom

The purpose of this protocol is to emphasize, not supplant, certain portions of the ethical principles applicable to the lawyer's conduct in the courtroom and to preserve the dignity of the courtroom and the judicial process. This protocol is also intended to further efficient and orderly fact-finding and to ensure that each party who comes before the court has a right to a fair trial.

1. Be on time for each court session. Trial engagements take precedence over any other business. If you have matters in other courtrooms, arrange in advance to have them continued or have a colleague handle them for you.
2. Stand at the podium at all times when addressing witnesses. Except upon express permission of the Court, all communications to the Court shall be made from a position at the counsel table or from the podium. Counsel shall not approach the bench, a witness, the Court Reporter's table or the Courtroom Clerk's desk without the permission of the Court.
3. Stand and do not pace when addressing the judge, jury or witnesses, exclusive of the opening statement and closing argument as permitted by the Court.
4. Do not appeal to emotion or prejudice during an opening statement to a jury. Confine yourself to a concise summary of the important facts that you expect to prove or your position on facts the opposition has undertaken to prove.
5. Exhibits:
 - (a) Court time may not be used for marking exhibits. This must be done in advance of the court session.
 - (b) In addition to counsel's copies, provide copies of exhibits for the judge and place copies on the witness stand (in witness trial binder) before the commencement of the trial.
 - (c) Any paper exhibit not previously marked for identification should first be handed to the Courtroom Clerk to be marked before it is tendered to a witness for examination or placed on a viewing screen.
 - (d) Any exhibit offered in evidence should, at the time of such offer, be handed to opposing counsel, unless it has been pre-marked and a copy is already in the possession of opposing counsel.
 - (f) Counsel shall arrange with the Courtroom Clerk for the use of chalkboards, tripods, video recorders, overheads, or other visual aids sufficiently in advance so that they may be set up while the Court is not in session.
 - (g) Diagrams, charts, drawings and other demonstrative or visual evidence shall, whenever practicable, be prepared by witnesses before testifying. Effort should be made to avoid using time during the presentation of evidence for these purposes.

- (h) If you intend to question a witness about a group of documents, please place all the documents in the group before the witness (in the witness trial binder) prior to commencing the examination.
- (i) Do not offer depositions wholesale; offer only relevant, redacted portions of the transcript and always in accordance with Rule 32 of the Federal Rules of Civil Procedure.
- (j) All documents/items referenced during the course of the trial must be identified and marked with an exhibit sticker, regardless of whether they are intended to be admitted at trial or not. This includes all documents/items used to impeach and/or refresh a witness's recollection. Documents/Items not intended to be admitted need not be pre-marked prior to trial, but once referred to during the course of the trial, must be identified and marked (should be marked using the next exhibit number/letter in that party's sequential order). Counsel is cautioned that if a document has any conceivable basis for admission, that document/item must be pre-marked and listed prior to trial.

6. Witnesses:

- (a) Only one attorney for each party shall examine or cross-examine a witness. The attorney stating objections during direct examination shall be the attorney conducting the cross-examination.
- (b) Refer to all persons, including witnesses, other counsel, and parties, by their surnames and not by their first or given names.
- (c) In examining a witness, counsel generally shall not repeat or echo the previous testimony or answers given by a witness or comment on, or exhibit approval or disapproval of the answer given by the witness.
- (d) The examination and cross-examination of each witness shall be limited to questions addressed to the witness. Counsel shall refrain from making statements, comments or remarks prior to asking a question or after a question has been answered.
- (e) All persons at counsel table are prohibited from making gestures, facial expressions, audible comments, or the like during the examination of a witness, as manifestations of approval or disapproval during the testimony of witnesses, or at any other time.
- (f) Counsel are expected to advise their witnesses of any court ruling to ensure that their testimony is in conformity with that ruling (i.e., orders on motion to exclude certain evidence, etc.). If a witness violates a prior court ruling regarding their testimony, the court may investigate whether sanctions and/or jury admonishments are appropriate, which may include asking the witness about counsel's efforts to advise the witness of the court's prior orders affecting the scope of his/her testimony.

7. Address all remarks to the Judge, not opposing counsel, and refrain from making disparaging or acrimonious remarks toward opposing counsel or witnesses.

8. Objections are to be limited to stating "objection" and the basis for the objection ("Objection, leading") or the number of the Federal Rule of Evidence relied upon (e.g., "Objection, Rule 403"). Do not explain or argue the grounds for objections in the presence of the jury unless asked to do so by the Judge. "Speaking Objections" are not allowed and will be overruled.

9. Gum chewing and non-court related reading (such as newspapers or magazines) is prohibited while court is in session. Beepers, cellular telephones and other noise-making electronic equipment must also be placed on silent or turned off while in session. This rule applies to any counsel, party or witnesses and counsel shall instruct those individuals accordingly.

10. Counsel should try to anticipate problems that will arise during trial and take them up with the Court and opposing counsel out of the presence of the jury. Appropriate motions in limine in advance of trial are encouraged. If during trial it becomes necessary for an attorney to confer with the Court at the bench, the Court's permission should be obtained.

11. Counsel shall not make motions (e.g., a motion for a mistrial) in the presence of the jury. Such matters may be raised at recess. If necessary to preserve a timeliness issue at trial, counsel may simply state, "I make a motion and reserve my arguments for the next recess."

12. If a party has more than one trial counsel, then arguments on motions, the opening statement, or closing argument shall be done by only one counsel (e.g. one counsel may do opening and another may do closing, etc.). However, upon obtaining prior permission of the Court, motions, the opening statement, or closing argument may be divided among counsel, if different subjects are addressed by counsel.

13. In opening statements and closing arguments to the jury, counsel shall not express counsel's own personal knowledge or personal opinion concerning any matter in dispute.

14. Offers of, or requests for, a stipulation should be made privately, outside the presence of the jury.

15. Counsel shall not, in the jury's presence, refer to any matter, witness, exhibit, or testimony that has been excluded by an order granting a motion in limine, or to which an objection was sustained, and/or motion to strike has been granted.

16. Counsel, the parties and their witnesses shall not discuss the case outside the courtroom in public areas where their conversation could be overheard by the jury. This would include hallway and cafeteria areas of the courthouse. The rooms located immediately outside of the courtroom can be used to discuss the case outside the presence of the jury. Counsel must advise their clients and their witnesses of this admonition.

17. Prior to the close of each business day, counsel shall provide opposing counsel with a list of witnesses counsel intends to call the next day.

18. Professionalism and civility are not aspirational but mandatory in this courtroom.